

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

DANIEL UMPA, on behalf of himself and )  
all others similarly situated, )

Plaintiff, )

v. )

Case No. 4:23-cv-00945-SRB

THE NATIONAL ASSOCIATION OF )  
REALTORS, HOMESERVICES OF )  
AMERICA, INC., BHH AFFILIATES, )  
LLC, HSF AFFILIATES, LLC, THE )  
LONG & FOSTER COMPANIES, INC., )  
KELLER WILLIAMS, REALTY, INC., )  
COMPASS, INC., EXP WORLD )  
HOLDINGS, INC., EXP REALTY, LLC, )  
REDFIN CORPORATION, WEICHERT )  
REALTORS, UNITED REAL ESTATE, )  
HANNA HOLDINGS, INC., DOUGLAS )  
ELLIMAN, INC., DOUGLAS ELLIMAN )  
REALTY, LLC, AT WORLD )  
PROPERTIES, LLC, THE REAL )  
BROKERAGE, INC., REAL BROKER, )  
LLC, REALTY ONE GROUP, INC., )  
HOMESMART INTERNATIONAL, LLC, )  
Defendants. )

**ORAL ARGUMENT REQUESTED**

Honorable Stephen R. Bough

**DEFENDANTS DOUGLAS ELLIMAN INC.'S AND DOUGLAS  
ELLIMAN REALTY, LLC'S INDIVIDUAL MOTION TO DISMISS PURSUANT TO  
RULE 12(b)(6) AND TO STRIKE CLASS ALLEGATIONS PURSUANT TO RULES 12(f)  
AND 23(d)(1)(D)**

Pursuant to Federal Rules of Civil Procedure 12(b)(6), 12(f), and 23(d)(1)(D), and in accordance with the Scheduling Order of this Court, Defendants Douglas Elliman Inc. and Douglas Elliman Realty, LLC (collectively, the “Douglas Elliman Defendants” or “Douglas Elliman”), by and through their undersigned counsel, move to dismiss the Class Action Complaint (the “Complaint”) filed by Plaintiff Daniel Umpa, individually and on behalf of all others similarly situated, for failure to state a claim, and to strike all class action allegations in the Complaint to

the extent that they do not exclude putative class members who have signed agreements to arbitrate or waive claims which Douglas Elliman can enforce in this action. In support of this motion, the Douglas Elliman Defendants rely upon Defendants Douglas Elliman Inc. and Douglas Elliman Realty, LLC's Suggestions in Support of Their Individual Motion to Dismiss Pursuant to Rule 12(b)(6) and to Strike Class Allegations Pursuant to Rules 12(f) and 23(d)(1)(D) (the "Douglas Elliman Suggestions"), which is filed contemporaneously herewith and incorporated by reference. The Douglas Elliman Defendants also rely upon the Suggestions in Support of Defendants' Joint Motion to Dismiss (ECF No. 201), the pleadings and records on file with this Court, any other motions to dismiss and suggestions in support of same concurrently filed by any other defendant in this action, and such argument as may be presented at any hearing on this motion.<sup>1</sup>

As further set forth in the Douglas Elliman Suggestions, Plaintiff has not plausibly alleged either of the Douglas Elliman Defendants' involvement in a conspiracy under Section 1 of the Sherman Act. Plaintiff has not plead facts sufficient to demonstrate the Douglas Elliman Defendants' involvement in any purported conspiracy, nor can Plaintiff sustain the argument that membership in a trade association alone meets its pleading burden. Without pleading any facts particular to the Douglas Elliman Defendants that allege their involvement, Plaintiff has failed to plausibly allege the Douglas Elliman Defendants' involvement in any purported conspiracy under Section 1. The claims against the Douglas Elliman Defendants should therefore be dismissed.

In addition, Douglas Elliman intends to invoke, and does not waive, its rights concerning any putative class members who have signed agreements with applicable arbitration clauses or class actions waivers. While the named plaintiff in this action appears not to have signed such an

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<sup>1</sup> In addition to the reasons for dismissal detailed in the Douglas Elliman Suggestions, the Douglas Elliman Defendants further incorporate the arguments set forth in their contemporaneously filed Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(3) for Lack of Personal Jurisdiction and Improper Venue. (See ECF No. 171.)

agreement, to the extent that members of the putative class did sign agreements with such arbitration or mediation clauses or class action waivers, Douglas Elliman now moves to enforce its arbitration, mediation, and class action waiver rights. The Eighth Circuit has clarified that those rights are not waived as to absent class members by moving to enforce them after a class is certified. Nonetheless, for the avoidance of any doubt, Douglas Elliman moves, pursuant to Rules 12(f) and 23(d)(1)(D), to strike the class allegations because of Plaintiff's failure to exclude from the putative class, those members who have signed agreements that contain an arbitration provision or class action waiver that apply to Douglas Elliman.

Dated: February 26, 2024  
New York, New York

Respectfully submitted,

/s/ Marc E. Kasowitz

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## **CERTIFICATE OF SERVICE**

The undersigned certifies that on the 26 day of February, 2024, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will provide an electronic copy to the following:

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